

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION**

UNIVERSAL LIFE CHURCH)
MONASTERY STOREHOUSE, ET AL.)
)
)
Plaintiffs,)
)
)
v.) No. 2:19-cv-00049
)
WAYNE NABORS, ET AL.,) Chief Judge Waverly Crenshaw
) Magistrate Judge Alistair Newbern
)
Defendants.)

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF JAMES WELCH
FOR FAILURE TO APPEAR AND TO STRIKE HIS DECLARATION**

Pursuant to Rules 37(d)(1)(A)(i) and 41(b) of the Federal Rules of Civil Procedure, Defendants Wayne Nabors, in his official capacity as county clerk for Putnam County, Tennessee, Herbert H. Slatery III, in his official capacity as Attorney General and Reporter for the State of Tennessee; Jennings H. Jones, in his official capacity as District Attorney General for Rutherford County, Tennessee; Neal Pinkston, in his official capacity as District Attorney General for Hamilton County, Tennessee; Bryant C. Dunaway, in his official capacity as District Attorney General for Putnam County, Tennessee; Kim R. Helper, in her official capacity as District Attorney General for Williamson County, Tennessee; and Bill Lee, in his official capacity as Governor of the State of Tennessee, respectfully ask this court to dismiss Plaintiff James Welch from this action and to strike the Declaration he submitted (Doc. 15) in support of Plaintiffs' motion for a temporary restraining order. While not joining in on this Motion, Defendant Clerks Elaine Anderson, William Knowles, and Lisa Duke Crowell do not oppose this Motion.

As explained more fully in the accompanying memorandum, the sanction of dismissal of Mr. Welch as a party to this case is warranted here, and the Plaintiffs should not be permitted to rely on a declaration by a Plaintiff who has refused to appear for his deposition. Mr. Welch knowingly and purposefully failed to appear at his properly noticed deposition, has failed to communicate any reason for not appearing, has since refused to respond to any communications from his counsel, and has failed to continue to prosecute this case. Exhibit A to Motion to Withdraw as Counsel for James Welch, Doc. 120-1. Defendants would be prejudiced by allowing Mr. Welch to remain in the case despite his refusal to submit to discovery and by any use of his Declaration in this case given their inability to depose him. The Plaintiffs who would remain in the case after Mr. Welch's dismissal would suffer no prejudice from his dismissal or from striking his Declaration.

Accordingly, Mr. Welch should be dismissed as a party to this case for failure to appear pursuant to Fed. R. Civ. P. 37(d)(1)(a)(i) and for failure to prosecute his claim pursuant to Fed. R. Civ. P. 41(a). Further, his declaration in support of Plaintiffs' motion for a temporary restraining order should be stricken.

The moving Defendants have conferred with Plaintiffs' counsel and counsel for the other defendants about Mr. Welch and the relief sought in this motion. L.R. 7.01. Having moved to withdraw as Mr. Welch's counsel, Plaintiffs' counsel take no position on the relief sought in this motion. Counsel for other defendants do not oppose the relief sought in this motion.

Given that Mr. Welch's counsel has moved to withdraw from his representation, Motion to Withdraw as Counsel for James Welch, Doc. 120, Defendants respectfully ask this Court to require Mr. Welch to indicate whether he would like to continue with this case and/or notify this Court that he has retained new counsel within five business days of this motion.

Respectfully submitted,

/s/ Jeffrey G. Jones

Jeffrey G. Jones, #12690
1420 Neal Street, Suite 201
P.O. Box 655
Cookeville, TN 38503
(931) 372-9123
jjones@wimberlylawson.com

/s/ Jonathan David Shaub

LESLIE ANN BRIDGES
Senior Deputy of Public Protection Section
and Counsel to the Attorney General
JONATHAN DAVID SHAUB (BPR 035915)
Assistant Solicitor General
P.O. Box 20207
Nashville, Tennessee 37202-0207
Tele: (615) 253-5642
jonathan.shaub@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2019, I filed the foregoing electronically through the Court's CM/ECF System and thereby served the following:

Rocklan W. King III
ADAMS & REESE LLP
424 Church Street, Suite 2700
Nashville, TN 37219
Phone: (615)259-1450
Fax: (615) 259-1470
rocky.king@arlaw.com

Lucian T. Pera
ADAMS & REESE LLP
6075 Poplar Avenue, Suite 700
Memphis, TN 38119
Phone: (901) 524-5278
Fax: (901) 524-5378
lucian.peru@arlaw.com

Ambika K. Doran
Bruce E.H. Johnson
Robert E. Miller
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104
Phone: (206) 622-3150
Fax: (206) 757-7700
brucejohnson@dwt.com
ambikadoran@dwt.com
robertmiller@dwt.com.

Attorneys for Plaintiffs

Lisa M. Carson
Lee Ann Thompson
BUERGER, MOSELEY & CARSON, PLC
306 Public Square
Franklin, TN 37064
Phone: (615) 794-8850
lcarson@buergerlaw.com
lthompson@buergerlaw.com

Attorneys for Defendant Elaine Anderson

Mary Neill Southerland
Rheubin Taylor
Sharon McMullan Milling
HAMILTON COUNTY ATTORNEY
204 Courthouse, 625 Georgia Avenue
Chattanooga, TN 37402
Telephone: (423) 209-6150
neills@hamiltontn.gov
rtaylor@hamiltontn.gov
sharonm@hamiltontn.gov

Attorneys for Defendant William Knowles

Nicholas C. Christiansen
Daniel W. Ames
COPE, HUDSON, REED & McCREARY,
PLLC
16 Public Square North
Murfreesboro, TN 37133
Telephone: (615) 893-552
Fax: (615) 849-2135
nchristiansen@mborolaw.com
dames@mborolaw.com

Attorneys for Defendant Lisa Duke Crowell

Leslie Ann Bridges
Senior Deputy and Counsel to the
Attorney General of the State of Tennessee
301 6th Avenue North
Nashville, TN 37243
Leslie.Bridges@ag.tn.gov
Jonathan David Shaub
Assistant Solicitor General to the
Attorney General of the State of Tennessee
301 6th Avenue North
Nashville, TN 37243
Telephone: (615) 253-5642
Jonathan.shaub@ag.tn.gov

s/ Jeffrey G Jones

Jeffrey G. Jones